UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

The State of COLORADO, *Petitioner* **-against-** Monsieur MAROT, Darriel POWELL, SEBNM, and Jonathan DOOM *Respondents*	**Case No.** 4:23-cv-0034M/QWT **Before** Qwerty, Chief Judge

OPINION AND ORDER ON MOTIONS TO INTERVENE

Mama G. Obies, Colorado Deputy Solicitor General, Colorado Department of Law, for the petitioner.

Niko Vicario and Chief Vinexy, *Esqs*., for the respondents.

Refreshed Mango, *Esq*., for the first intervenor.

Knick Caldwell, *Esq*., for the second intervenor.

Before QWERTY, Chief Judge, U.S. District Court for the District of Columbia:

We are seised today of several petitions for writs of *quo warranto* against multiple United States judges, the respondents. The petitions appear to challenge the validity of their holding office as United States judges. Perhaps unsurprisingly, several individuals or groups have moved to intervene in the action at bar, namely the Board of Law Examiners (1st Intervenor) and Squnqs, Gobies and Associates, a law firm (2nd intervenor). We fully expect that further motions to intervene will be filed in due course.

The 2nd intervenor presents arguments both of intervention as of right and on permissive grounds. The 1st intervenor, on the other hand, appears to present us with a concise motion which, to our mind appears to seek permissive intervention in order to defend its interests. We turn first to explain why we decline to explore the question of intervention as of right.

I

The second intervenor first claims an interest giving rise to an intervention as of right under Fed. R. Civ. P. 24(a)(2), which may appear to our mind to be best addressed first. As the intervenor correctly points out, this circuit has "divided Rule 24(a)(2) into four elements" *Defenders of Wildlife v. Perciasepe*, 714 F.3d 1317, 1322 (D.C. Cir. 2013). See *Brewer v. Sessions*, 863 F.3d 861, 872 (D.C. Cir. 2017) (Observing that the four factors are, respectively that "(1) the motion for intervention must be timely; (2) intervenors must have an interest in the subject of the action; (3) their interest must be impaired or impeded as a practical matter absent intervention; and (4) the would-be intervenor's interest must not be adequately represented by any other party."). Timeliness cannot reasonably be contested – the motion to intervene was filed promptly after the action was brought.

We turn now to the second prong of intervention. Despite its perhaps narrow-sounding language of "property or transaction", we have sometimes claimed that "the standards for constitutional standing and the second factor of the test for intervention as of right are the same" *Crossroads Grassroots Policy Strategies v. Fed. Election Comm'n*, 788 F.3d 312, 320 (D.C. Cir. 2015), although only in an inconsistent fashion, since we have at other times held that the putative intervenor "must *additionally* demonstrate Article III

standing" *In re Endangered Species Act Section 4 Deadline Litig.*, 704 F.3d 972, 976 (D.C. Cir. 2013) (emphasis added). At best, the distinction between the two concepts is somewhat fuzzy, and our circuit has exhibited a tendency towards proximity between the two, *cf. Jones v. Prince George's County, Maryland*, 348 F.3d 1014, 1018 (D.C. Cir. 2003) ("Article III's "gloss" on Rule 24 requires an intervenor to have a "legally protectable" interest") *accord Brewer v. Sessions*, 863 F.3d 861, 872-73 (D.C. Cir. 2017) (Explaining that this Circuit has allowed interventions form "persons who allege that they have suffered injury from the same or very similar wrongful acts as those complained of by the original plaintiffs"), but whatever this circuit's position might be, we readily accept that nonpecuniary interests, contrary to what a narrow reading of Rule 24(a)(2) might induce, may also be protected upon intervention. Since, whether or not standalone or integrated into Rule 24, in this circuit, it is "settled precedent that all intervenors must demonstrate Article III standing" *Old Dominion Elec. Coop. v. Fed. Energy Regulatory Comm'n*, 892 F.3d 1223, 1233 n.2 (D.C. Cir. 2018), and our authorities appear to suggest that in any event either the two interests functionally equate to one another or the standing requirement as a more stringent standard, so this to our mind appears to be the optimal starting point for Rule 24(a)(2) analysis. *Cf. Cook v. Boorstin*, 763 F.2d 1462, 1466 (D.C. Cir. 1985) ("the 'interest' test is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process") (quoting *Foster v. Gueory*, 655 F.2d 1319, 1324 (D.C. Cir. 1981)), *Town of Chester v. Laroe Estates, Inc.*, 137 S. Ct. 1645, 1651 (2017) ("*[A]t the least*, an intervenor of right must demonstrate Article III standing when it seeks additional relief beyond that which the plaintiff requests") (emphasis added).

We once gave a careful discussion of concepts of standing in *Auditors of America v. United States et al.*, 2 A.A.Dig. _____, 2:23-CV-0023/QWT, slip op. at *12-23 (D. Colo. 2023). We do not propose to repeat our theory with this Circuit's precedent in full herein. Nor will we give any further thought at this stage to whether, as a general proposition, persons who are not the United States Attorney-General have standing to bring a petition for a writ of quo warranto. See *Sibley v. Obama*, 866 F. Supp. 2d 17, 20 (D.D.C. 2012) (The D.C. Circuit, on the basis of D.C.Code § 16–3503, "has concluded that only the Attorney General or the United States Attorney has standing to bring a quo warranto action challenging a public official's right to hold office."). Nevertheless, we think it a reasonable summary of our findings to suggest that constitutional standing in the broader sense – we will of course return to the specific question of *quo warranto* standing later, but as neither party raises it, and the respondents and putative intervenor-respondents have not even had the opportunity to challenge this court's subject-matter jurisdiction, or whether the petition states a claim, yet we think it premature and inexpedient to address it *sua sponte* now – serves (i) to ensure that the court hears cases which are concrete and adversary in their nature, allowing the court to adjudicate an actual dispute, and (ii) to prevent the abuse of the courts and the litigation process. We also agree with many of the conclusions raised by the concurrence in *Arpaio v. Obama*, 797 F.3d 11, 29-32 (D.C. Cir. 2015) (BROWN, J., concurring), although we do not entirely agree with JUDGE BROWN's conclusions as to the history and advent of the doctrine.

Despite some of our misgivings though, "[v]ertical *stare decisis* is absolute and requires lower courts" *United States v. Duvall*, 740 F.3d 604, 609 (D.C. Cir. 2013) to abide by it, "command[ing] judicial respect

for a court's earlier decisions and the rules of law they embody" *Id.* (quoting *Randall v. Sorrell*, 548 U.S. 230, 243, 126 S.Ct. 2479, 165 L.Ed.2d 482 (2006) (opinion of BREYER, J.) (plurality opinion)). In any event, our epistemological differences with the orthodox doctrine do not readily translate into practical divergences in the greater number of cases, extending at best only to a very limited number of edge cases. We begin thus with a few familiar principles. In traditional D.C. Circuit jurisprudence, a party's "burden is to show they have standing not only under Article III of the Constitution of the United States but also under our doctrine of prudential standing" *Sherley v. Sebelius*, 610 F.3d 69, 71 (D.C. Cir. 2010), although in recent years a growing discourse has grown regarding whether or not prudential standing really is a jurisdictional bar.

We commence with constitutional standing. The usual three-part test commends to us that "[t]he plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Comm. On Judiciary of U.S. House of Representatives v. McGahn*, 968 F.3d 755, 763 (D.C. Cir. 2020). This can be simplified further – for one, this circuit has heartily adopted the Supreme Court's view that a party must "first and foremost" *Zukerman v. United States Postal Serv.*, 64 F.4th 1354, 1361 (D.C. Cir. 2023) (quoting *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 576 U.S. 787, 799-800, 135 S.Ct. 2652, 192 L.Ed.2d 704 (2015)) (alteration in original) prove injury-in-fact. In a second refinement, courts have sometimes suggested that, especially in action attempting to challenge supposedly illegal governmental action, "[c]ausation and redressability typically "overlap as two sides of a causation coin." *Carpenters Indus. Council v. Lewis Cnty.*, 854 F.3d 1, 6 n.1 (D.C. Cir.

2017) (quoting *Dynalantic Corp. v. Department of Defense*, 115 F.3d 1012, 1017 (D.C. Cir. 1997)), since most such actions seek some form of cessation or reparation for the illegal conduct. None of this thus far is particularly challenging intellectually.

In alleging injury-in-fact, the putative intervenor explains to us that the respondents to the petitions were not appointed in line with the "competency-based selection process" U.S. Const. Art. 3 § 7 purportedly required by the Constitution. It goes on to point out that the intervenor, as a law firm, regularly litigates in front of those judges who were not subjected to the process, and explains that it is threatened with unfavourable decisions arising out of judicial incompetence. Whilst the movant does not explain how he has been harmed in a "concrete and particularized" *Frank v. Autovest, LLC*, 961 F.3d 1185, 1189 (D.C. Cir. 2020) way by the allegedly unlawful conduct he attempts to challenge, he does allege a future injury. Broadly speaking, this Circuit subscribes to the view that "[a] petitioner alleging future injuries can establish standing by satisfying either the 'certainly impending' test or the 'substantial risk' test." *New Jersey v. Envtl. Prot. Agency*, 989 F.3d 1038, 1047 (D.C. Cir. 2021) (quoting *Attias v. Carefirst, Inc.*, 865 F.3d 620, 626–27 (D.C. Cir. 2017) (internal quotation marks omitted). The general maxim of this Circuit's rule on "probabilistic standing" are that the plaintiff must show "at least both (i) a substantially increased risk of harm and (ii) a substantial probability of harm with that increase taken into account." *Elec. Privacy Info. Ctr. v. Fed. Aviation Admin.*, 892 F.3d 1249, 1255 (D.C. Cir. 2018) (quoting *Public Citizen, Inc. v. Nat'l Highway Traffic Safety Admin.*, 489 F.3d 1279, 1295 (D.C. Cir. 2007)) *accord New Jersey*, 989 F.3d at 1047 (quoting *Food & Water Watch, Inc. v. Vilsack*, 808 F.3d 905, 914 (D.C. Cir. 2015). When doing this, the "proper way" to analyse

this is to treat the "ultimate alleged harm" as the "as the concrete and particularized injury and then to determine whether the increased risk of such harm makes injury to an individual citizen sufficiently 'imminent' for standing purposes." *Attias v. CareFirst, Inc.*, 865 F.3d 620, 627 (D.C. Cir. 2017).

Before we go any further, however, we must consider what sort of injury the plaintiff-intervenor is alleging violation of – the requirement of a "competency-based selection process" which supposedly has not been met is not *ipso facto* what is causing the injury, it is instead the ramifications of failing to follow that process – namely the subsequent nomination of judges who may be incompetent and who in turn sit in cases in which the movant-intervenor is involved – which is the source of the injury. Distinguishing between a procedural injury and a "classic" Article III-standing injury is not a minor inconsequent point of procedure – instead, "[w]here plaintiffs allege injury resulting from violation of a procedural right afforded to them by statute and designed to protect their threatened concrete interest, the courts relax–while not wholly eliminating–the issues of imminence and redressability, but not the issues of injury in fact or causation." *Center for Law and Educ. v. Dept. of Educ*, 396 F.3d 1152, 1157 (D.C. Cir. 2005). "[A] bare procedural violation, divorced from any concrete harm" *Hancock v. Urban Outfitters, Inc.*, 830 F.3d 511, 514 (D.C. Cir. 2016) (quoting *Spokeo v. Robins*, 578 U.S. 330, 340-01, 136 S.Ct. 1540, 1549, 194 L.Ed.2d 635 (2016)) is not sufficient injury. Instead, under this standard, injury "occurs when a governmental action is undertaken without following a required procedure, and that procedure both is designed to protect some threatened concrete interest of the plaintiff and, if not followed, will cause a distinct risk to a particularized interest of the plaintiff." *Huron v. Cobert*, 809 F.3d 1274, 1279 (D.C.

Cir. 2016) (quoting *Florida Audubon Soc'y v. Bentsen*, 94 F.3d 658, 664 (D.C. Cir. 1996) (en banc)) (internal quotation marks omitted). The operative requirements of the redressability prong change too – this "relaxed redressability requirement is met when correcting the alleged procedural violation *could* still change the substantive outcome in the petitioner's favor; the petitioner need not go further and show that it *would* effect such a change." *Narragansett Indian Tribal Historic Pres. Office v. Fed. Energy Regulatory Comm'n*, 949 F.3d 8, 13 (D.C. Cir. 2020). See also *National Treasury Emp. Union v. U.S.*, 101 F.3d 1423, 1429 (D.C. Cir. 1996) (Suggesting that imminency requirement shifts "may someday injure" standard).

In short, the focus shifts from *is* the plaintiff injured because of the procedural violation to: *might* the injury have plausibly been alleviated if procedure had been followed.

The difficulty arises from the sort of violation with which we are faced. This would not be the first time that a court has "struggled" *W. Coal Traffic League v. Surface Transp. Bd.*, 998 F.3d 945, 954 (D.C. Cir. 2021) with this important distinction. Nevertheless, a few reminders may assist us in proceeding. To begin with, we must distinguish between procedural attacks and attempts to infirm "the substantive decision itself" *Spectrum Five LLC v. FCC*, 758 F.3d 254, 264 n.10 (D.C. Cir. 2014). Secondly, for a procedural injury standing assertion to prevail, the plaintiff must show that "the procedures in question are designed to protect some threatened concrete interest of [*theirs*] that is the ultimate basis of [*their*] standing" *NB ex rel. Peacock v. District of Columbia*, 682 F.3d 77, 82 (D.C. Cir. 2012) (emphasis added) (alteration in original) *accord St. Croix Chippewa Indians v. Salazar*, 384 F. App'x 7, 8 (D.C. Cir. 2010) (Plaintiff "must identify an injury

that follows the violation of a procedural right, which was afforded to them by statute and designed to protect their threatened concrete interests."). Some provisions within the Constitution, such as provisions relating to the passing of legislation contained within Article I of the Constitution have been found by this Court as not constituting such a procedural *right*. See *Common Cause v. Biden*, 909 F. Supp. 2d 9, 18-20 (D.D.C. 2012) *aff'd on other grounds* 748 F.3d 1280 (D.C. Cir. 2014).

We readily acknowledge that there is a valid question – and no doubt will this play a role in these proceedings – as to whether or not the merits-based selection process requirement enumerated within the Constitution is a right instituted to protect citizens or users of the justice system. We have not, however, so much as heard a single representation from any of the parties on this matter though, and it would not be expedient of us to prejudge it in considering the question before the defendants have even had the opportunity to raise a challenge to this court's jurisdiction or the whether or not the petition states a claim under Fed. R. Civ. P. 12(b)(6). Of only slightly lesser difficulty to the court is the question of understanding what the petitioners and intervenors in support thereof are seeking to challenge.

Continuing *arguendo* to explore the limits of the *quo warranto* theories before the court, were the decision to nominate itself being challenged by way of a writ of *quo warranto*, we suspect that we would have been obliged to dismiss it for much the same reasons as in *Common Cause*, 748 F.3d, at 1285, for the actual decisionmaker, the President of the United States, is not a party to this proceeding. In this instant case, and as best as we can tell from the State of Colorado's petition and the plaintiff-intervenor's motion, which sets out no

particular claims distinct from the initial petition, however, like in *Andrade v. Lauer*, 729 F.2d 1475 (D.C. Cir. 1984), it is not the nominations that are impugned. Instead, a writ of *quo warranto* goes to "the qualifications of the officer" *SW General, Inc. v. Nat'l Labor Relations Bd.*, 796 F.3d 67, 81 (D.C. Cir. 2015) (quoting *Andrade*, 729 F.2d at 1496), and whilst to be sure in the case at bar the attack on the qualification originates from the irregular procedure, and which we must of course address on the merits as a collateral matter, it is not the procedure itself which is being called into question.

We think therefore, still *arguendo* – whilst acknowledging that at this early stage in proceedings the parties may still seek to refine their arguments and relief – that we are right in applying the traditional standards of standing to the petition. When we do so, we must take care not to jumble the merits and the jurisdictional threshold issue, and so we "take the allegations of the complaint as true and assume the validity of the plaintiffs' legal theory" *Johnson v. Comm'n on Presidential Debates*, 869 F.3d 976, 987 (D.C. Cir. 2017) *accord Fulani v. Brady*, 935 F.2d 1324, 1332 (D.C. Cir. 1991) ("For standing purposes, this court must accept each of [the] allegations as true.").

While we do accept the alleged facts as true, we do not accept mere conclusory allegations as such. Applying the substantial risk standard, the plaintiff-intervenor must show that the unlawful activity complained of – those irregularly appointed judges holding office and discharging illegally the duties of a United States judge – has significantly increased the risk of it being subject to the harms it speaks of – namely judicial decisions which are, to use a colloquialism, "wrong". The first step in our standing analysis is to look to see whether there is an "invasion of a legally protected [or judicially

cognizable] interest" *Laroque v. Holder*, 650 F.3d 777, 781 (D.C. Cir. 2011). Even though, of course, judicial incompetence is not a one-sided matter and an incompetent judge may in the future work in favour of the intervenor in cases he is litigating, *United States v. Cianfrani*, 573 F.2d 835, 853 (3d Cir. 1978) *accord Gannett Co. v. Depasquale*, 443 U.S. 368, 428 (1979), we agree, that the intervenor's argument that erroneous decisions because of judicial incompetence is indeed an interest which the intervenor is allowed to protect. We now move onto the imminence step of analysis. Here, we have a few more misgivings about the intervenor-plaintiff's case. He is essentially attempting to suggest to us that the failure to screen these judges on their competency, as required by the merits-based process, has substantially increased the chances not only of chancing upon a judge which has not been correctly screened but is substantially likely to render a judgment unfavourable to the plaintiff-intervenor. We might be willing to accept that argument. We might too if he were able to produce past decisions where he has been injured by judicial incompetence. The trouble with it, however, is that he does not, bar making a general suggestion that all judges lack the intellect to exercise their duty until proven otherwise, plead anything which shows how the respondent judges continuing to hear cases *will* cause injury to him – at best, he raises a plausible, hypothetical, "might". Even were he to clear this hurdle we would then need to explore causation.

We quickly reach the intellectual confines of the *quo warranto* exercise. We recognise that there may well be another interpretation of our court's *quo warranto* jurisdiction – and indeed perhaps a different subset of cases where we are not called upon to enquire into the firmity of the acts of the officeholder for his very mere holding of office, such as where the injury arises directly out of the person holding office, or if we

had before us a theory of injury based not out of a narrow theoretical subset of acts committed but out of a more likely subset – or a different manner of constructing the movant's pleadings, but the trouble here is that courts have repeatedly pointed out that parties "are not entitled to judges of their own choice" *United States v. Heldt*, 668 F.2d 1238, 1274 (D.C. Cir. 1981) – and a different interpretation of our standing jurisprudence, and we are willing to return to this matter at a later time. Because, however, we grant permissive intervention, this motion is moot and so we decline to explore it further today.

II

Despite our misgivings, we propose to grant intervention for both the intervenors on the second, permissive, ground. This is, as the name suggests, a less rigid, "discretionary" *In re Idaho Conservation League*, 811 F.3d 502, 515 (D.C. Cir. 2016) matter. The firm requirements here are only that (i) the motion is timely, (ii) that the intervenor "has a claim or defense that shares with the main action a common question of law or fact" and (iii) that the intervention "will [not] unduly delay or prejudice the adjudication of the original parties' rights". Fed. R. Civ. P. 24(b).

"It remains ... an open question in this circuit whether Article III standing is required for permissive intervention" *Defenders of Wildlife v. Perciasepe*, 714 F.3d 1317, 1327 (D.C. Cir. 2013) see also *Cigar Ass'n of Am. v. U.S. Food & Drug Admin.*, 323 F.R.D. 54, 66 (D.D.C. 2017), but see *Parker v. John Moriarty & Assocs.*, 319 F.R.D. 18, 21-22 (D.D.C. 2016). Cases which stand for this proposition generally have one, or both, of two progenies: they either rely on the – uncertain – requirement of "an independent ground for subject matter jurisdiction" *Abulhawa v. U.S. Dep't of the Treasury*, 239 F. Supp. 3d 24, 31 (D.D.C.

2017) (quoting *EEOC v. Nat'l Children's Ctr., Inc.*, 146 F.3d 1042, 1046 (D.C. Cir. 1998)), or they rely, like *Parker*, on the concurrency of JUDGE SILBERMAN in *Deutsche Bank Nat'l Trust Co. v. Fed. Deposit Ins. Corp.*, 717 F.3d 189, 195 (D.C. Cir. 2013). Whilst we are bound in considering intervention as of right to adopt in its full rigour the binding requirements of our circuit, the authority in support of the proposition that permissive intervenors are held to the same standards is not one we are bound to accept. We, like many judges in our circuit, do not believe that *EEOC* definitively resolves the question – we do not think that the requirement for subject matter jurisdiction precludes all permissive interventions without standing, but merely those where claims beyond those or different to those of the main plaintiffs are brought, since subject matter jurisdiction is not gained "in gross" *Owner-Operator Indep. Drivers Ass'n, Inc. v. U.S. Dep't of Transp.*, 879 F.3d 339, 346 (D.C. Cir. 2018) (quoting *Town of Chester*, 137 S. Ct. at 1650) but is instead attached to each claim. The same cannot be said of the *Deutsche Bank* principles, however. Much to the contrary, it would be irrational of this court to completely disregard the questions of standing and injury when considering permissive intervention as the very same considerations which mandate them for an intervenor as of right by and large apply to permissive intervention, and as such they must, simply put, enter into the calculus of the court's discretion. We return to this question *infra*.

Regarding the concept of a claim or defence, "this circuit avoids strict readings of the phrase 'claim or defense'" *In re Endangered Species Act*, 704 F.3d, at 980 (quoting *EEOC* 146 F.3d, at 1045-46). Tellingly, the *Endangered Species Act* court cites notably to *Nuesse v. Camp*, 385 F.2d 694, 704 (D.C. Cir. 1967), where our Court of Appeals held that "in the intervention area the "interest" test is primarily a

practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process." *Id*, at 700.

We consider lastly the issue of whether intervention will "prejudice the adjudication of the original parties' rights". While last prong appears mainly to be a question of timeliness, cf. *In re Endangered Species Act*, 704 F.3d, at 976, *Sault Ste. Marie Tribe v. Bernhardt*, 331 F.R.D. 5, 14 (D.D.C. 2019), *Wash. All. of Tech. Workers v. U.S. Dep't of Homeland Sec.*, 395 F. Supp. 3d 1, 19 (D.D.C. 2019), *New Hampshire v. Holder*, 293 F.R.D. 1, 8 (D.D.C. 2013), *Comm'r, Ala. Dep't of Corr. v. Advance Local Media, LLC*, 918 F.3d 1161, 1171 n.9 (11th Cir. 2019) (Explaining that the Fifth Circuit has held that "[t]he most important consideration in determining timeliness is whether any existing party to the litigation will be harmed or prejudiced by the proposed intervenors; delay in moving to intervene.") (quotation omitted), sometimes courts have discussed, usually in passing or in addition to delay, other factors of prejudice. Cf. *N.C. State Conference of NAACP v. Berger*, 999 F.3d 915, 939 (4th Cir. 2021) *rev'd on other grounds* 142 S. Ct. 2191 (2022) (Describing plaintiffs "who would be required to address "dueling defendants" with multiple litigation strategies all purporting to represent the same state interest" as contributing to prejudice.) (quoting in part *North Carolina State Conference of NAACP v. Cooper*, 332 F.R.D. 161, 172 (M.D.N.C. 2019)). Moreover, some courts have emphasised the importance of the word "undue". See e.g. *Coffey v. Comm'r of Internal Revenue*, 663 F.3d 947 (8th Cir. 2011)

Within this framework, the Court is willing to permissively allow intervention from both intervenors. It goes without saying that both are timely and do not cause undue delay. Even though, by reason of the

demanding character of our standing jurisprudence, the second intervenor does not demonstrate Article-III standing to bring such the petition in his own right, we are satisfied that he nevertheless has a *bona fides* interest in the outcome in these proceedings. Indeed, had the litigation been brought in a different manner with a different theory of jurisdiction, there is a significant chance that we might well, under the procedural injury theory, have held that the intervenor had standing to bring the claims.

The first intervenor, the Federal Bar Association, regulates the practice of law within the United States. Its only alleged interest is that as the administrator of examinations of legal proficiency, it has an interest in the nature of the "legal proficiency" requirement of U.S. Const. Art. III § 7. The Association does not show how it has a "claim or defense" that is "common" with the action. Fed. R. Civ. P. 24(b). It does not even, whether by adopting the arguments of one of the parties, or by raising its own arguments, show how it has a claim or defence at all, other than a general interest and expertise in assessing the competence of legal professionals – indeed that is the only interest that the Association alleges. This, to our mind, appears closely to resemble the role of an *amicus curiae*. As this Court has previously explained "*[a]micus* participation is normally appropriate when … 'the amicus has an interest in some other case that may be affected by the decision in the present case,' [or] 'when the amicus has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.'" *Hard Drive Prods., Inc. v. Doe*, 892 F. Supp. 2d 334, 337 (D.D.C. 2012) (quoting *Jin v. Ministry of State Sec.*, 557 F.Supp.2d 131, 137 (D.D.C.2008)). In another case, we explained that "[a]n amicus brief is appropriate where "the brief will assist the judges by presenting ideas, arguments,

theories, insights, facts, or data that are not to be found in the parties' briefs.'" *WildEarth Guardians v. Zinke*, 368 F. Supp. 3d 41, 59 (D.D.C. 2019) (quoting *Voices for Choices v. Ill. Bell Tel. Co.*, 339 F.3d 542, 545 (7th Cir. 2003)). We note furthermore that this court "has broad discretion to permit the proposed intervenors to participate as *amici curiae*." *Dist. of Columbia v. Potomac Elec. Power Co.*, 826 F. Supp. 2d 227, 237 (D.D.C. 2011).

It is clear to the Court that the proposed *amicus* is able to offer expertise and a viewpoint which is not currently represented before the court – that of a major legal professional association, with at least some experience in assessing legal proficiency, even if that assessment is of a somewhat different character to that of potential judicial nominees. As a final matter, this court has previously explained the role of an *amicus* in a District Court in *Leboeuf, Lamb, Greene & Macrae, LLP v. Abraham*, 205 F.R.D. 13, 21 (D.D.C. 2001). As such, it may appear at public hearings and proceedings, and the court may request its views. The *amicus* may also participate, with this Court's leave in most other proceedings, such as the filing of motions and discovery.

* * * * *

ORDER

For the foregoing reasons, the court orders as follows:

1. That motion to permissively intervene of Squnqs, Gobies and Associates (SQA) is **granted**.
2. That SQA's motion to intervene as of right is **dismissed as moot**.
3. The 1st Intervenor, the Federal Bar Association is admitted as an ***amicus curiae***.
4. That the motion to intervene by the Federal Bar Association is **denied**.

It is so ORDERED,

28th November 2023

/s/Newplayerqwerty

CUSDJ